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13 **UNITED STATES DISTRICT COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**
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17 PETER DIXON individually,)
18)
19)

20 Plaintiff,)
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22)

23 vs.)
24)
25)

26 CITY OF OAKLAND and the)
27 OAKLAND POLICE DEPARTMENT,)
28 public entities, SERGEANT BERNARD)
ORTIZ, OFFICER STEVEN TORIBIO,)
OFFICER PATRICK GERRANS,)
OFFICER ROBERT GERRANS,)
OFFICER R. GARCIA, PERSONAL)
PROTECTIVE SERVICES, INC., a)
California corporation, DEMONT)
MARROW and DOES 1 through 10,)
individually, jointly and severally,)

29 Defendants.)
30)
31)

Case No. C12-5207 DMR

**(REVISED) STIPULATED
PROTECTIVE ORDER**

1 The parties, by and through their respective attorneys of record, hereby stipulate to the
 2 following protective order being issued in this matter:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of
 5 confidential or private information for which special protection from public disclosure and from
 6 use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the
 7 parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.
 8 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
 9 responses to discovery and that the protection it affords extends only to the limited information or
 10 items that are entitled under the applicable legal principles to treatment as confidential. The
 11 parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
 12 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth
 13 the procedures that must be followed and reflects the standards that will be applied when a party
 14 seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers, directors, employees,
 17 consultants, retained experts, and outside counsel (and their support staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless of the
 19 medium or manner generated, stored or maintained (including, among other things, testimony,
 20 transcripts, or tangible things) that are produced or generated in disclosures or responses to
 21 discovery by any Party in this matter.

22 2.3 "Confidential" Information or Items: information (regardless of how generated,
 23 stored or maintained) or tangible things that qualify for protection under standards developed
 24 under Federal Rule of Civil Procedure 26(c). This material includes, but is not limited to,
 25 Plaintiff's medical and Plaintiff's psychotherapeutic records, as well as officer personnel records
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1 and other similar confidential records designated as such.

2 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
5 Material in this action.

6 2.6 Designating Party: a Party or non-party that designates information or items that it
7 produces in disclosures or in responses to discovery as “Confidential.”
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9 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
10 “Confidential.”

11 2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained
12 to represent or advise a Party in this action.

13 2.9 House Counsel: attorneys who are employees of a Party.

14 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
15 support staffs).
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17 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to
18 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
19 consultant in this action and who is not a past or a current employee of a Party or of a competitor
20 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
21 or a competitor of a Party’s.

22 2.12 Professional Vendors: persons or entities that provide litigation support services
23 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
24 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material
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(as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routine designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the

1 material is disclosed or produced. Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of depositions
3 or other pretrial or trial proceedings), that the Producing Party affix the legend
4 “CONFIDENTIAL” at the top of each page that contains protected material and/or the first page
5 of stapled/clipped materials if it is a group of related documents. If only a portion or portions of
6 the material on a page qualifies for protection, the Producing Party also must clearly identify the
7 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
8 each portion that it is “CONFIDENTIAL.”

9 A Party or non-party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has indicated
11 which material it would like copied and produced. After the inspecting Party has identified the
12 documents it wants copied and produced, the Producing Party must determine which documents,
13 or portions thereof, qualify for protection under this Order, then, before producing the specified
14 documents, the Producing Party must affix the designation “CONFIDENTIAL” at the top of each
15 page that contains Protected Material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party must clearly identify the protected portion(s) (e.g., by
17 making appropriate markings in the margins) and must specify that the material is
18 “CONFIDENTIAL.”

19 (b) for testimony given in deposition or in other pretrial or trial proceedings,
20 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
21 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
22 any portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to
23 identify separately each portion of testimony that is entitled to protection, and when it appears that
24 substantial portions of the testimony may qualify for protection, the Party or non-party that
25 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
26 proceeding is concluded) a right to have up to twenty (20) days to identify the specific portions of
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1 the testimony as "CONFIDENTIAL." Only those portions of the testimony that are appropriately
 2 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
 3 Protective Order.

4 Transcript pages containing Protected Material must be separately bound by the
 5 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as
 6 instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than documentary, and for any
 8 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 9 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
 10 If only portions of the information or item warrant protection, the Producing Party, to the extent
 11 practicable, shall identify the protected portions, specifying the material as "CONFIDENTIAL."

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 13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 14 designate qualified information or items as "CONFIDENTIAL" does not, standing alone, waive
 15 the Designating Party's right to secure protection under this Order for such material. If material is
 16 appropriately designated as "CONFIDENTIAL" after the material was initially produced, the
 17 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
 18 that the material is treated in accordance with this Order.

19 5.4 Privilege Logs. If a party withholds information that is responsive to a discovery
 20 request by claiming that it is privileged or otherwise protected from discovery, that party shall
 21 ***promptly*** prepare and provide a privilege log that is sufficiently detailed and informative for the
 22 opposing party to assess whether a document's designation as privileged is justified. *See*
 23 Fed.R.Civ.P. 26(b)(5). The privilege log shall set forth the privilege relied upon and specify
 24 separately for each document or for each category of similarly situated documents:

25 (a) the title and description of the document, including number of pages or Bates-
 26 number range;

(b) the subject matter addressed in the document;

(c) the identity and position of its author(s);

(d) the identity and position of all addressees and recipients;

(e) the date the document was prepared and, if different, the date(s) on which it was sent to or shared with persons other than its author(s); and

(f) the specific basis for the claim that the document is privileged and protected.

Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Failure to furnish this information promptly may be deemed a waiver of the privilege of protection.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly either in person or by telephone, and may not meet and confer by letter, e-mail or fax, with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. If disagreements remain regarding a designation, the parties shall file a joint letter no later than five business days after the meet and confer session, unless otherwise directed by the court. **Lead trial counsel for both parties must sign the letter**, which shall include an attestation that the parties met and conferred in person or by telephone regarding all issues prior to filing the letter. Going issue-by-issue, the joint letter shall describe each unresolved issue, summarize each party's position with appropriate legal authority; and provide each party's final proposed compromise before moving to the next issue. The joint letter shall not exceed ten pages without leave of court. **Parties are expected to plan for and cooperate in preparing the joint letter so that each side has adequate time to address the arguments.** In the rare instance that a joint letter is not possible, each side may submit a letter not to exceed four pages, which shall include an explanation of why a joint letter was not possible. The parties shall submit one exhibit to the letter that only sets forth each disputed designation in full, followed immediately by the objections and/or responses thereto. No other information shall be included in any such exhibit. No other exhibits shall be submitted without prior approval by the court. The court will review the submission(s) and determine whether formal briefing or proceedings are necessary. **Discovery letter briefs must be e-filed under the Civil Events category of Motions and Related Filings > Motions - General > "Discovery Letter Brief".**

In the event that a hearing is ordered, the court expects counsel to appear in person. Permission for a party to attend by telephone may be granted, in the court's discretion, upon written request made at least one week in advance of the hearing if the court determines that good cause exists to excuse personal attendance, and that personal attendance is not needed in order to have an effective discovery hearing. The facts establishing good cause must be set forth in the request.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to treat the material in question as "CONFIDENTIAL."

1 In emergencies during discovery events (such as depositions), any party may, after
 2 exhausting good faith attempts to resolve disputed issues, seek judicial intervention pursuant to
 3 Civil L.R. 37-1(b) by contacting the court through the courtroom deputy. If the court is
 4 unavailable, the discovery event shall proceed with objections noted for the record.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 7 produced by another Party or by a non-party in connection with this case only for prosecuting,
 8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 9 the categories of persons and under the conditions described in this Order. When the litigation has
 10 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
 11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and in
 13 a secure manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 16 information or item designated CONFIDENTIAL only to:

17 (a) the Receiving Party’s counsel of record in this action, as well as employees
 18 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

19 (b) the officers, directors, and employees (including House Counsel) of the
 20 Receiving Party to whom disclosure is reasonably necessary for this litigation;

21 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
 22 is reasonably necessary for this litigation;

23 (d) the Court and its personnel;

24 (e) court reporters, their staffs, and professional vendors to whom disclosure is
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1 reasonably necessary for this litigation;

2 (f) during their depositions, witnesses in the action to whom disclosure is
3 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
4 reveal Protected Material must be separately bound by the court reporter and may not be disclosed
5 to anyone except as permitted under this Stipulated Protective Order.

6 (g) the author of the document or the original source of the information.

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8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

10 If a Receiving Party is served with a subpoena or an order issued in other litigation that
11 would compel disclosure of any information or items designated in this action as
12 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax
13 and/or e-mail) immediately and in no event more than three court days after receiving the
14 subpoena or order. Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused the
16 subpoena or order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
18 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
19 caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence of
21 this Protective Order and to afford the Designating Party in this case an opportunity to try to
22 protect its confidentiality interests in the court from which the subpoena or order issued. The
23 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
24 confidential material – and nothing in these provisions should be construed as authorizing or
25 encouraging a Receiving Party in this action to disobey a lawful directive from another court.
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9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination

1 by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the
7 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
9 Order, and (d) request such person or persons to be bound by the Stipulated Protective Order.

10 11. FILING PROTECTED MATERIAL

11 Without written permission from the Designating Party or a court order secured after
12 appropriate notice to all interested persons, a Party may not file in the public record in this action
13 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
14 with Civil Local Rule 79-5.

15 12. FINAL DISPOSITION

16 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
17 days after the final termination of this action, defined as the dismissal or entry of judgment by the
18 district court, or if an appeal is filed, the disposition of the appeal, each Receiving Party must
19 return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
20 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing
21 or capturing any of the Protected Material. With permission in writing from the Designating
22 Party, the Receiving Party may destroy some or all of the Protected Material instead of returning
23 it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
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26 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
27 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
28 interests in this court.

1 written certification to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the
3 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
4 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
5 any of the Protected material. Notwithstanding this provision, Counsel are entitled to retain an
6 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
7 attorney work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective Order as set
9 forth in Section 4 (DURATION), above.

10 13. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the Court in the future.

13 12.2 Chambers Copies and Proposed Orders. Pursuant to Civil L.R. 5-1(e)(7) and 5-
14 2(b), parties must lodge an extra paper copy of certain filings and mark it as a copy for
15 "Chambers." Please three-hole punch the chambers copy and submit it to the Oakland Clerk's
16 Office.

17 Any Stipulation or proposed order submitted by an e-filing party shall be submitted by
18 email to dmrpo@cand.uscourts.gov as a word processing attachment on the same day the
19 document is e-filed. This address should only be used for this stated purpose unless otherwise
20 directed by the court.

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12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: HADDAD & SHERWIN

/s/ Michael J. Haddad*
MICHAEL J. HADDAD
Attorneys for Plaintiff PETER DIXON

Dated: OAKLAND CITY ATTORNEY'S OFFICE

/s/ Arlene Rosen*
ARLENE ROSEN
Attorneys for Defendants CITY OF OAKLAND, R.
GERRANS, P. GERRANS, R. GARCIA, B. ORTIZ
and S. TORIBIO

Dated: BREMER WHYTE BROWN & O'MEARA LLP

/s/ Lance Pedersen*
LANCE PEDERSEN
Attorneys for Defendants PERSONAL
PROTECTIVE SERVICES, INC. and DEMONT
MARROW

*Mr. Haddad, Ms. Rosen and Mr. Pedersen provided their consent that this document be electronically filed.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

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3 Dated: Oct 31, 2013



HONORABLE DONNA M. RYU
United States Magistrate Judge